

Amendments to the Drawings:

No amendments are made to the Drawings herein.

REMARKS

By the foregoing Amendment, Claims 1 and 3 are amended, and Claim 2 is cancelled. Entry of the Amendment, and favorable consideration thereof, is earnestly requested. Applicant believes that the entry of this Response is proper as it places the application in condition for allowance and makes no substantive amendments to the Claims other than to rewrite Claim 2 in independent form by incorporating it into independent Claim 1. Claim 3 is amended merely to change its dependency, and Claim 2 is cancelled. Thus, Claims 1 and 3-17 remain pending.

All claims stand rejected either under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,861,170 to Rodriguez, or under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of various secondary and tertiary references. Applicant respectfully asks the Examiner to reconsider these rejections in view of the following Remarks.

The present invention is directed to systems and methods of providing an economical, simple, and effective portable water heating source. To this end, all claims require a number of unique features, including the requirement of an adjustable thermostatic control controlling the output of the heating element.

Applicant respectfully submits that the main cited reference, Rodriguez, does not disclose, teach or suggest this element in any way. Applicant acknowledges that Rodriguez discloses a thermostat which acts as a safety device by opening the circuit of the heating coil when the temperature of the valve chamber rises to a predetermined point. (See Rodriguez at col. 3, lines 63-71.). The Examiner appears to be attempting to characterize this pre-set thermostat as somehow being "an adjustable thermostat," as is required by all claims. ("This in

the broad reasonable interpretation is an adjustable control (since threshold is predetermined) for the output of the heating element (opening the circuit leads to no output) as merely required by instant Claim 2 language"). Applicant respectfully disagrees.

Applicant acknowledges that, during examination, pending claims must be "given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). However, this basic precept of patent examination does not mean that examiners are free to stretch the meaning of claim terms as far as they desire, and without limitation, in order to cover the teachings of the prior art. Rather, an examiner's interpretation of claim terms be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

Here, Applicant respectfully submits that the term "adjustable thermostat" is a term that would be familiar to a person having ordinary skill in the art, and that such a person having ordinary skill in the art would understand the term to mean a thermostat that is adjustable by a user so that at least two (and typically many) set points can be selected by a user. Applicant further respectfully submits that a person having ordinary skill in the art would not understand a thermostat having a (i.e., one) predetermined threshold to be an "adjustable" thermostat. Rather, one skilled in the art would clearly understand the safety thermostat included in the Rodriguez device to be a non-adjustable thermostat, which are non uncommon in safety related applications.

In view of the above, Applicant respectfully submits that Rodriguez, with its teaching of a non-adjustable safety thermostat, having a single predetermined

threshold setting, can not possibly anticipate any claim of the present application, since all claims thereof require “an adjustable thermostat” controlling operation of the heating element.

Moreover, Applicant respectfully submits that neither Rodriguez alone, nor Rodriguez when properly combined with any reference, would render obvious the present invention, as claimed.

It is well settled that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination or modification. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). It is also well settled that if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

In the present case, not only does Rodriguez provide absolutely no suggestion of the desirability of providing an adjustable thermostatic temperature control, but Rodriguez also expressly teaches away from such a feature. It is one of the main express objects of Rodriguez to “simplify the construction so that a single manually operated valve will shut off the water or will turn on cold water, or warm water, or hot water as selected by the operator.” (see column 1, lines 19-23). To this end, Rodriguez goes to great lengths to describe a valve which controls how much cold water in an arm is mixed with the heated water that is rising up from the bottom of a tank, and mixing automatically with cold water in the arm. (See Rodriguez at col. 2, lines 47-50; col. 2, line 68 to col. 3, line 2; col. 4, lines 13-18). Thus, a thermostat does not control the temperature of the water.

Rather, temperature variation and control is achieved by the degree of mixing of two water streams, the heated water in the tank rising up and mixing and the cold water from the arm manually controlled by turning of a valve (not thermostatically controlled). Rodriguez's thermostat is merely a high temperature shut-off.

Thus, one skilled in the art would be taught away from replacing the temperature control valve of Rodriguez with a thermostatic temperature control, since doing so would render the Rodriguez device unsatisfactory for one of its main intended purposes (i.e., providing a single manually operated valve that controls water temperature). As such, one skilled in the art would not modify Rodriguez in such a manner, or combine Rodriguez with some other reference in a way which would result in a device modified in such a manner.

For the foregoing reasons, Applicant respectfully submits that all pending claims, namely Claims 1 and 3-17, are patentable over the references of record, and earnestly solicits allowance of the same.

Respectfully submitted,



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